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September 26, 2002

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte Communication CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; and CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996**

Dear Ms. Dortch:

On September 26, 2002, the undersigned and Jake Jennings, NewSouth Communications, met with Claudia Pabo, Ian Dillner, Jeremy Miller, Michael Engel, Julie Veach, Ben Childers, Gina Spade, Tom Navin, Rob Tanner, Brent Olsen, and Elizabeth Yockus of the Wireline Competition Bureau to discuss the Commission's rules regarding unbundled network elements. The views presented by NewSouth were consistent with the attached presentation and its comments in the above-referenced proceeding.

In accordance with Section 1.1206(b) of the Commission's Rules, an original and two copies of this letter are being filed with your office for inclusion in the public record of the above-referenced docket.

Very truly yours,

Michael H. Pryor
Counsel to NewSouth Communications

Attachment
MHP:crl

UNEs FOSTER INVESTMENT

Access to UNEs has enabled NewSouth to deploy a high-speed network capable of bringing local and long distance voice and advanced data services to small and mid-sized businesses throughout the Southeast.

NewSouth's network consists of the following main elements:

Self-Deployed voice (13) and digital (14) switches.
Multiplexing and related equipment established in 80 collocations.
NOC/Back office billing and customer care platforms.
Electronic OSS/bonding.
Leased Intercity/InterLATA Fiber backbone.

This network investment constitutes "facilities-based" competition.

NewSouth connects this network to customers through ILEC facilities

DS1 loops/EELs from collocation to customer
Transport from collocation to switch
-- IntraLATA backhaul overwhelmingly on ILEC facilities

Limited UNEP primarily to serve enterprise customers.

COMPETITIVE BENEFITS OF NEWSOUTH INVESTMENT

NewSouth's deployment of elements that are sensible to duplicate, coupled with access to ILEC network elements that are "too expensive" to duplicate, brings competitive benefits to NewSouth customers:

New and expanded services. Over 90% of new customers are upgraded from analog to digital broadband services, *e.g.*, high speed internet access, web-hosting, VPNs.

Better prices.

Better customer care.

NEWSOUTH IS IMPAIRED WITHOUT ACCESS TO UNE DS1 LOOPS/EELs

NewSouth could not bring competitive benefits to customers without access to UNE DS1 loops and EELs.

NewSouth economically can provide service utilizing its own switching platform to customers with sufficient volume to warrant aggregation at the premises via a PBX or key system. NewSouth provides such services via a nonchannelized DS1 loop/EEL.

The average NewSouth customer utilizes 17 lines. NewSouth's economic break-even point is about 12 voice lines or 10 lines of combined voice and data, as long as at least 4 are data.

NewSouth has no alternative to reach customers other than ILEC loops/EELs

- NewSouth cannot economically self-provision DS1 level loops.
- NewSouth is not aware of any carrier other than the ILEC that has loop facilities available to NewSouth.

CCG Report on the State of Local Competition demonstrates that carriers have not self-deployed loops below the OC-n level. Even at the OC-n level, there has been little self-deployment.
For example, in Augusta, GA, a market served by NewSouth, only 13 of 7,728 commercial buildings in the MSA have been connected by a competing carrier's loop facilities. These facilities are not available to other carriers.

There is little, if any, "intermodal" competition for the small and medium-sized business customers served by NewSouth.

EELs ARE VITAL TO NEWSOUTH'S ABILITY TO SERVE ITS CUSTOMERS

As a practical, operational and economic matter, NewSouth views EELs as a loop with a distance sensitive pricing component.

EELs extend NewSouth's potential market approximately 10-fold.

Without EELs, NewSouth potential market is limited to customers that subtend the 80 ILEC central offices in which NewSouth is collocated.

EELs have the potential to extend NewSouth's reach to roughly 800 central offices.

In assessing unbundled transport, there is a critical distinction between interoffice transport component of EELs which is used to connect customers to collocated equipment, and interoffice transport used to backhaul traffic from collocation to a CLEC switch.

There are a limited alternatives for backhaul transport in discrete areas, but even this limited availability is subject to severe constraints, such as the need for additional collocation, transaction costs and quality of service issues. There are no alternatives for "line side" transport.

Now that the Supreme Court has affirmed the Commissions rules on combinations, the Commission should define the EEL as a separate network element.

> The loop element should be defined as a transmission facility, including attached electronics/ multiplexing, between the distribution frame or its equivalent in an ILEC central office where the competing carrier is either collocated or has a point of presence and the loop demarcation point at an end user premises (or equivalent facility), regardless of whether the transmission facility transverses one or more intermediate wire centers between those two points.

The reach of EELs is not unlimited. The costs of the transport component of the EEL place practical limits on the extent to which EELs can extend a carrier's reach.

The Costs of Integrating NewSouth's Switching Platform Into the ILEC Local Network Preclude NewSouth from Providing Switch-based Service to Smaller Businesses.

For carriers such as NewSouth that cannot duplicate local loop facilities, the ability economically to provide service to customers over their own switches is intimately tied to costs of obtaining access to the ILECs' local distribution plant (*i.e.*, local loop/EELs/backhaul transport).

NewSouth cannot provide service to customers at less that the DS1 level through self-deployed switches, largely because of the costs of having to integrate the switch into the ILEC's local network.

These costs include:

> Collocation. NewSouth estimates that it incurs costs totaling approximately $500,000 over the first three years of a collocation site. These costs include building collocation space, recurring charges for rent and power, purchasing and installing equipment.
>
> Loop Cutovers. To access analog loops, the loop must be removed manually from the ILECs switch and cutover to the CLECs collocation arrangement. This process not only entails direct costs, but also constitutes a gating mechanism on mass market switched-based entry.
>
> Transport or backhaul costs.

These costs are in addition to the costs of the switch itself, which is a fixed cost that must be spread over the customer base.

These costs preclude NewSouth from serving customers over its own switch unless that customer has sufficient volume to warrant DS1 level service.

TO SERVE CUSTOMERS WITH LOWER VOLUMES, NEWSOUTH MUST RELY ON UNEP

To the extent the Commission retains a switch carve-out, establishing the carve out at the DS1 level, rather than the current 3 line level, comports with economic, business and operational reality.

UNEP enables NewSouth to serve smaller businesses and enterprise customers with multiple locations.

As the cost of integrating the switch into the ILECs network decrease, NewSouth will be able to provide switch-based service to an expanding customer base.

Micro switches may enable NewSouth to expand its customer base.

Reducing Costs Associated Associated With Integrating CLEC Switches with ILEC Distribution Plant Will Increase Facilities Based Competition

By taking the following actions, the Commission can increase loop access efficiency and reduce transaction costs:

Definition of the loop must continue to include attached electronics.

LECs must attach electronics to derive DS1 UNE loop to the same extent that they do for special access customers – and at no greater upfront cost.

More generally commission must clearly define what constitutes "existing facilities."

> The Commission should follow the lead of court and state commission decisions finding that ILECs must add electronics to derive higher capacity UNEs to the same extent that the ILEC would as those facilities to serve its own retail customers – and at the same cost.

The Commission should clarify that CLECs can convert to UNEs stand alone loops purchased from special access tariffs.

Eliminate co-mingling restrictions.

> CLECs should be able to combine UNE loops or EELs to special access backhaul transport from ILEC tariffs or from third parties. This is especially critical if the Commission restricts unbundled transport.

CLECs should not be required to collocate in order to access loops/EELs.

> No legal or policy basis for requiring CLEC to undertake the time and expense of constructing a collocation facility for the sole purpose of connecting loop facilities to transport facilities.
> Cross connecting to a CFA block is a technically feasible method of accessing UNEs.
> Any necessary ILEC multiplexing equipment between the loop facility and transport facility should be considered a UNE, *i.e.,* attached electronics.